

US EPA ARCHIVE DOCUMENT

May 29, 2009

Deborah Jordan  
Director, Air Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

MORONGO  
BAND OF  
MISSION  
INDIANS



Re: Request to Create a Separate Nonattainment Area for the Morongo Indian Reservation.

Dear Ms. Jordan:

This letter, submitted on behalf of the Morongo Band of Mission Indians ("Morongo" or "Tribe"), requests that the U.S. Environmental Protection Agency (EPA or Agency) create a separate nonattainment area for the Morongo Reservation or, alternatively, move the western boundary of the Coachella Valley Nonattainment Area in the Salton Sea Air Basin westward to include the Morongo Reservation.

This request has a significant history, which provides the context for your consideration of the accompanying detailed justification (Attachment A) submitted in support of the Tribe's request. On November 6, 2003, EPA modified the boundaries of nonattainment areas in Southern California so that the Morongo Reservation "moved" from the Coachella Valley Nonattainment Area within the Salton Sea Air Basin (see Figure 1) to the South Coast Air Basin, which had a more restrictive ozone attainment designation. In its decision to modify the nonattainment area boundaries, EPA failed to acknowledge the existence of the Morongo Reservation as a separate, sovereign jurisdiction and failed to recognize the major implications for the Tribe of moving the area boundary. The Tribe's economic and governmental interests, specifically its inherent authority with respect to reservation air quality planning and its nascent regulatory and permitting authority under the Tribal Authority Rule, were supposed to be protected by the EPA until the Tribe could formally assume these responsibilities. This was not done, as evidenced by the lack of EPA consultation with the Tribe during the 2003 boundary change rulemaking, as required under Executive Order 13175 and the federal trust responsibility.

As explained in Attachment A, the significant negative effects of the 2003 boundary change on the Tribe's interests will be further exacerbated as the result of the State of California's recent petition to EPA to "bump up" the ozone classification for the South Coast Air Basin from "severe-17" to "extreme." In short, the "bump up" to a 10 tpy major source threshold for ozone precursor emissions will thwart or significantly impair the Tribe's plan to develop a tribal air permit program for minor sources by increasing the number of facilities potentially subject to Nonattainment New Source Review (NNSR) and thereby increasing the use and cost of Morongo Environmental Department resources, and will severely compromise the Tribe's capacity to engage in

economic development in the absence of a program for obtaining emission reduction credits for on-Reservation facilities subject to NNSR requirements under the lower major source threshold. This latter aspect places on-Reservation facilities at a distinct disadvantage relative to similar facilities operating outside the Reservation.

The Tribe's request that EPA create a separate nonattainment area for the Morongo Reservation would address these tribal concerns, and is a logical and technically sound initiative that addresses the nine factors suggested in EPA guidance for establishing or changing nonattainment area boundaries. Moreover, although the accompanying rationale for a separate nonattainment area for the Morongo Reservation is compelling, the accompanying discussion of the nine factors also would support a determination by EPA to move the western boundary of the Coachella Valley Nonattainment Area to include the Morongo Reservation.

Important context for this request is the debate over the original basis for locating the boundary between the South Coast Basin, as it was called at that time<sup>1</sup> and before nonattainment areas were created, and the Southeast Desert Basin (before the creation of the current Salton Sea Air Basin). In their June 1968 staff report,<sup>2</sup> ARB "staff recommended that the boundary be moved to the west edge of the San Gabriel Mountains rather than its originally proposed location at the ridge of these mountains." The rationale was that the communities of Banning and Beaumont, both located on the west side of the Morongo Reservation, "share in the general air pollution problems of the northern portion of the Coachella Valley." The then-existing Riverside County Air Pollution Control District believed that these communities should be included in the desert portion of Riverside County, not as they are now, which is in the South Coast Basin portion of the county.

In 1996,<sup>3</sup> the ARB discussed moving the boundary of the South Coast Air Basin towards the east when they were creating the Salton Sea Air Basin out of part of the prior Southeast Desert Air Basin. The move proposed to add the San Geronio Pass area, which includes Beaumont, Banning and the Morongo Reservation, to the South Coast Air Basin. This move was requested by the South Coast Air Quality Management District (AQMD) because they argued that the San Geronio Pass area had climate and geography more similar to the adjacent area of the SoCAB than to the adjacent area of the Southeast Desert Air Basin (which preceded the current Salton Sea and Mojave Desert Air Basins).<sup>4</sup> This discussion included the understanding that changing air basin boundaries would also affect the geographical definitions of nonattainment areas. The proposed changes were documented in an ARB staff report.<sup>5</sup>

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<sup>1</sup> ARB. *Minutes of the 8th Meeting*, November 20, 1968.

<sup>2</sup> ARB. *Proposal for the Division of California into Air Basins*, June 1968.

<sup>3</sup> ARB. *Board Item Summary*, Board Meeting Item 96-4.2, May 30, 1996.

<sup>4</sup> The AQMD's discussion was supported by limited analysis; we believe that the enclosed analysis demonstrates that the Morongo Reservation should be its own nonattainment area.

<sup>5</sup> ARB. *Proposed Amendments to Divide the Southeast Desert Air Basin and to Modify the Boundary of the South Coast Air Basin and Proposed Amendments to the Related Agricultural Burning Regulations*, May 30, 1996.

In the 1996 ARB report, staff noted that if it had not been for the AQMD request, the San Geronio area, which includes the Morongo Reservation, would have become a part of the Salton Sea Air Basin when it was formed from the prior Southeast Desert Air Basin, and hence, the Morongo Reservation would have been included in the later designation of the Coachella Valley Nonattainment Area.

Accordingly, the Tribe respectfully requests that EPA fully consider and support the Tribe's request and justification for creation of a separate nonattainment area for the Morongo Reservation. However, should EPA determine that creation of such an attainment area is not approvable, the Tribe requests that EPA adjust the boundary of the Coachella Valley Nonattainment Area to include the Morongo Reservation. In either event, we expect that EPA will closely consult with the Tribe before reaching a final decision.

We look forward to your response and working with EPA on these important issues. Coordination of your agency's consultation with the Tribe should be arranged through Ms. Liz Bogdanski, Director of the Morongo Environmental Protection Department. Questions or issues of a legal nature should be directed to Stephen Quesenberry at Karshmer & Associates, our General Counsel. Questions or issues of a technical nature should be directed to Gary Rubenstein at Sierra Research.

Sincerely,

A handwritten signature in black ink, appearing to read 'RM', is written over the word 'Sincerely,'.

Robert Martin, Chairman  
Morongo Band of Mission Indians

cc: Liz Bogdanski, Director, Environmental Protection Department  
Colleen McKaughan, EPA Region 9  
Stephen Quesenberry, Karshmer & Associates  
Gary Rubenstein, Sierra Research